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SUPREME COURT OF THE UNITED STATES

October Term, 1983

No. 83-190

ABATTI FARMS, INC. AND ABATTI PRODUCE INC.,

Petitioners,

vs.

AGRICULTURAL LABOR RELATIONS BOARD AND UNITED FARM WORKERS OF AMERICA, AFL-CIO,

Respondents.

MOTION OF WESTERN GROWERS ASSOCIATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF GRANTING PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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Western Growers Association respectfully moves this Court for leave to file the accompanying brief **amicus curiae** in support of granting the petition of Abatti Farms, Inc. and Abatti Produce, Inc. ("Abatti") for **certiorari** to the Supreme Court of the State of California. The consent of the attorneys for the petitioners has been obtained. The consent of the attorneys for the respondents was requested but refused.

INTEREST OF WESTERN GROWERS ASSOCIATION

Western Growers Association, a non-profit trade organization, was formed more than 50 years ago for the express purpose of representing the interests of the farming community. The Association's 1061 members grow and ship approximately 85 percent of the fresh vegetables and 50 percent of the fresh fruit produced in California and Arizona.[1] Association members frequently are parties to proceedings involving the California Agricultural Labor Relations Board ("ALRB" or "Board"). Of the 170 cases listed in Petitioners' Cumulative ALRB Litigation Results appendix,[2] 82 cases involved Western Growers Association members, and Association attorneys provided representation in 41 of those cases.[3]

1. If California fresh fruit and vegetable production is considered by itself, these percentages remain unchanged. The Association's Arizona roster contains no more than 86 members.
2. **See** Petition for Writ of Certiorari, Appendix F.
3. Appendix A.

The vast majority of Association members have fared no better than Abatti when filing petitions for writs of review.[4] Western Growers Association members appealing ALRB orders to the California Courts of Appeal have received summary denials of 80.7 percent of their petitions.[5]

This Court's decision will have a profound effect upon the constitutional rights of Association members. Western Growers Association is therefore particularly concerned that it have an opportunity to present its views.

ISSUES TO BE COVERED IN THE BRIEF AMICUS CURIAE

Western Growers Association submits that the economic importance of California agriculture combine with the predilection of ALRB members to abuse their administrative discretion makes the availability of judicial review on the merits critical.

The Association is also disturbed by the Agricultural Labor Relations Board's heavy reliance on **Kremer v. Chemical Construction Corp.**, 456 U.S. 461, 102 S.Ct. 1883, 72 L.Ed.2d 262 (1982), for the proposition that summary judicial review of administrative proceedings is compatible with due process. For a variety of reasons, **Kremer** does not merit this characterization, and Western Growers Association is concerned that an accurate analysis be presented to this Court.

4. Petitioners are also members of Western Growers Association.

5. Of the cases involving petitions for writs of review listed in Appendix F of the Petition for Writ of Certiorari, 57 were filed by Western Growers Association members; 46 were summarily denied. See Appendix A.

Finally, in prior Board hearings the ALRB has consistently held that denial of a petition for review by the Court of Appeal is not a decree or order of that court, is not a re-
of Appeal is not a decree or order of that court, is not a judgment on the merits, and does not operate as **res judicata** or collateral estoppel. Most recently, the ALRB reaffirmed this principle in a case involving Abatti Farms itself. Western Growers Association believes the ALRB's own holdings should be taken into account when deciding how much weight to accord its current contention that denial of a petition for review is a judgment on the merits.

WHEREFORE, Western Growers Association respectfully moves for permission to file the attached brief **amicus curiae**.

Respectfully submitted,

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF OF AMICUS CURIAE WESTERN GROWERS ASSOCIATION IN SUPPORT OF GRANTING PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

Western Growers Association respectfully submits this brief in support of the petition of Abatti Farms, Inc. and Abatti Produce, Inc. ("Abatti") for **certiorari** to the Supreme Court of the State of California.

INTEREST OF AMICUS CURIAE

A statement describing Western Growers Association and its interest in this case is set forth in the preceding motion requesting leave to file this brief **amicus curiae**.

ARGUMENT

I.
GIVEN THE IMPORTANCE OF CALIFORNIA AGRICULTURE, JUDICIAL REFUSAL TO REVIEW THE VAST MAJORITY OF PETITIONS FOR WRITS OF REVIEW IS UNJUSTIFIED.

The economic importance of California agriculture on both the state and national level amplifies the significance of this case. In 1982, over 80,000 farms employing an average of 288,700 workers generated 14.3 billion dollars in

cash receipts.[1] Last year, total economic activity derived from California agriculture was estimated at 57.2 billion dollars, over 13 percent of the gross state product.[2]

1. Employment figures are derived from California Employment Development Department Report 881W (December 12, 1982). Due to a change in methodology, an annual average is not available for 1982. The 1982 cash receipts figure is contained in the 1982 Annual of the California Department of Food and Agriculture, Crop and Livestock Reporting Service. Volume *I*, Part 5 of the 1978 Census of Agriculture (published in June, 1981 by the United States Department of Agriculture, Bureau of the Census) documents the number of California farms.

2. California Department of Water Resources Bulletin No. 210, "Measuring Economic Impacts: The Application of Input-Output Analysis to California Water Resources Problems (March, 1980)." Each commodity has its own dollar multiple; the average multiple is three dollars in cash receipts produced in agriculture-related industries for each dollar in cash receipts directly produced by agriculture.

California gross state product figures are contained in the University of California at Los Angeles Business Forecast for the Nation and California, page 98, table 33. (1983)

California also has led the nation in agricultural cash receipts for 35 consecutive years.[3] The state is responsible for 39.1 percent of the country's vegetable, fruit and nut production,[4] as well as approximately 10 percent of national agricultural exports.[5] California produces more of 48 commercial crops than any other state.[6]

3. California Department of Food and Agriculture, Crop and Livestock Service, 1982 Annual.

4. United States Department of Agriculture Research Service, "Economic Indicators of Farms Sector, State Income, and Balance Sheet Statistics (1981)."

In 1981, California produced 2.579 billion dollars in cash receipts of the country's 8.418 billion dollars in vegetables, a 30.6 percent market share. The state contributed 3.077 billion dollars, or 47.6 percent, to the national total of 6.464 billion dollars in cash receipts from fruits and nuts.

Total national agricultural cash receipts in 1981 -- including the leading sectors such as dairy and livestock -- were 143.4 billion dollars. California contributed 13.9 billion dollars, or 9.7 percent.

A further indicator of the market dominance of California agriculture is contained in Appendix B, which details the percentage, by commodity, of California agricultural production relative to national production.

5. California Department of Food and Agriculture, "Exports of Agricultural Products Produced in California 1981-1982)"; United States Department of Agriculture, Economic Research Service, "Foreign Agricultural Trade of the United States (March-April, 1983)." The USDA reports a smaller export share -- 7.9 percent in 1981 - than does the California report.

6. California Department of Food and Agriculture, Crop and Livestock Service, 1982 Annual.

To ensure the vitality of this industry and improve labor relations, the Agricultural Labor Relations Board ("ALRB") was established in 1975 pursuant to the Agricultural Labor Relations Act ("ALRA").[7] The ALRA is modeled after the National Labor Relations Act ("NLRA"),[8] and the ALRB is required to follow applicable NLRA precedent.[9]

The ALRB has ignored this mandate, however, and has consistently deviated from NLRA precedent.[10] In addition, the political inclinations of the majority of Board members prevent the ALRB from operating as a neutral arbiter of labor disputes:

> While [it] was undoubtedly the intention of the Legislature [that the ALRB be an "expert agency"], there is no information in the record regarding the expertise of the persons occupying the positions on the Board. If we could take judicial notice of the political inclinations and formal and practical background and intellectual qual-

7. Cal.Lab. Code §1141 **et seq.** (West Supp. 1983).
8. 29 U.S.C. §141 **et seq.** (1976).
9. Cal.Lab. Code §1148 (West Supp. 1983).
10. As the California Court of Appeal stated in **Sunnyside Nurseries, Inc. v. Agricultural Labor Relations Board**, 93 Cal.App.3d 922, 940, 156 Cal.Rptr. 152 (1979):

> Here the Board in its short life had acquired little expertise; it would have done well [in fashioning remedies for ALRA violations] to have drawn on the long experience of its federal counterpart, the National Labor Relations Board, and the related judicial determinations under the National Labor Relations Act.

> ities of the members of the Board, our assessment might be far less complementary than implied by the principal opinion. **United Farm Workers v. Superior Court**, 72 Cal.App.3d 268, 277, 140 Cal.Rptr. 87 (1977) (concurring and dissenting opinion of Brown, P.J.)

The vagaries of the ALRB increase the probability of administrative abuse of discretion. This abuse is of particular concern with respect to the "make-whole" remedy imposed on Abatti; the California Supreme Court has, in an analogous context, recognized the deterrent effect of "make-whole" on appeal-worthy cases.[11] Court of Appeal review of Board orders on the merits is therefore especially important as a check on arbitrary administrative action.[12] Nevertheless, the Courts of Appeal have consistently refused to provide this review.

Notwithstanding the productivity of California farmers, agriculture in this state is subject to the same uncertainties as in the rest of the nation. Farmers face an array of variables such as weather, market conditions, and crop decisions. The refusal of the California Courts of Appeal to review the vast majority of ALRB decisions introduces yet another uncertainty into the life of the farmer. Like climatic variables, it affects millions of dollars of agricultural productivity. Unlike these variables, it is both completely unnecessary and readily cured.

11. **See J.R. Norton Co. v. Agricultural Labor Relations Board**, 26 Cal. 3d 1, 34-35, 603 P.2d 1306 (1979), and cases cited therein.
12. **J.R. Norton Co. v. Agricultural Labor Relations Board**, 26 Cal.3d at 33.

II.

KREMER v. CHEMICAL CONSTRUCTION CORP. IS FACTUALLY INAPPOSITE TO THE PRESENT CASE.

The ALRB contends that **Kremer v. Chemical Construction Corp.**, 456 U.S. 461, 102 S. Ct. 1883, 72 L.Ed.2d 262 (1982), is "dispositive of the issues raised" by Abatti.[13] For a number of reasons, this reliance is misplaced.

Kremer filed an employment discrimination charge with the Equal Employment Opportunity Commission ("EEOC") under Title VII of the Civil Rights Act of 1964.[14] The EEOC referred the charge to the New York State Division of Human Rights ("NYHRD"), which is responsible for enforcing New York's employment discrimination laws.[15]

After investigation, the NYHRD concluded that there was no probable cause to support Kremer's complaint. The Appeal Board of the NYHRD upheld this finding on the grounds that it was not "arbitrary, capricious, or an

13. Respondent's Brief in Opposition at p. 6.

14. 78 Stat 253, as amended, 42 U.S.C. §2000e **et seq.** (1976).

15. N.Y. Exec. Law §§295(6), 296(1)(a) (McKinney 1982). Section 706(c) of the Civil Rights Act of 1964, 42 U.S.C. §2000e-5(c), requires the EEOC to refer to such complaints to the appropriate state agency for initial review. See 456 U.S. at 463-64, 102 S. Ct. at 1888, 72 L.Ed.2d at 269.

abuse of discretion."[16]

Kremer again notified the EEOC of his complaint, and petitioned the Appellate Division of the New York Supreme Court to set aside the Agency's finding. The Appellate Division unanimously affirmed the Appeal Board's order; Kremer did not seek further review by the New York Court of Appeals.

Subsequently, a District Director of the EEOC issued a right-to-sue letter and refused a request for reconsideration. Kremer then filed a Title VII action in District Court. The suit proceeded through the Court of Appeals to this Court.[17] A sharply-divided Court[18] held that 28 U.S.C.

16. 456 U.S. at 464, 102 S. Ct. at 1888, 72 L.Ed.2d at 269. When the NYHRD finds no probable cause for a complaint -- as in Kremer's case -- a reviewing court must affirm the division's decision unless it is "arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion." N.Y. Exec. Law §297-a(7)(e) (McKinney 1982). If the agency finds no probable cause to support the complaint and holds a hearing, the decision must be affirmed if it is "supported by substantial evidence on the whole record." N.Y. Exec. Law § 297-a(7)(d) (McKinney 1982). Although these sections specifically describe the scope of review by the NYHR Appeal Board, the same standards also apply to review of NYHRD decisions by New York courts. **See** N.Y. Exec. Law §298 (McKinney 1982)(findings of fact shall be conclusive "if supported by sufficient evidence on the record considered as a whole"); N.Y. Civ. Prac. Law §7803 (McKinney 1982); **Mize v. State Division of Human Rights**, 33 N.Y.2d 53, 57, 349 N.Y.S.2d 364, 367-68, 304 N.E.2d 231, 233 (1973).

17. 456 U.S. at 466, 102 S.Ct. at 1889, 72 L.Ed.2d at 270.

18. Justice Blackmun filed a dissenting opinion, in which Justice Brennan and Justice Marshall joined. Justice Stevens filed a separate dissenting opinion.

§1738 required federal courts to give preclusive effect to the state court's judgment upholding the state administrative agency's rejection of the employment discrimination claim.

The applicability of **Kremer** is doubtful from the outset because the opinion focuses on the complex interplay between Title VII of the Civil Rights Act of 1964[19] and the preclusive effect upon state court judgments of 28 U.S.C. §1738. The specific constitutional issues raised by Abatti were not the subject of **Kremer**; the ALRB has taken the case out of context.

Kremer's Title VII emphasis reveals another distinction from this case. Despite their differences, the Justices agreed that Title VII permits a trial **de novo** in federal district court of an unreviewed state agency determination.[20] The preclusive effect of 28 U.S.C. §1738 operates only when a complainant has obtained judicial review of that agency's findings.

In contrast, Abatti has had no such opportunity. The California Court of Appeal is the **only** court empowered to hear appeals from ALRB findings and orders.[21] If the Court of Appeal does not grant review, the Board may request the Superior Court to enforce the order, and the Superior Court is statutorily precluded from reviewing its merits.[22]

19. 78 Stat 253, as amended, 42 U.S.C. §2000e **et seq.** (1976)
20. 456 U.S. at 470, n. 7, 102 S.Ct. at 1891, n. 7, 72 L.Ed.2d at 273, n. 7; 456 U.S. at 487, 102 S.Ct. at 1900, 72 L.Ed.2d at 284 (dissenting opinion of Blackmun, J.); 456 U.S. at 508-509, 102 S.Ct. at 1911, 72 L.Ed.2d at 297 (dissenting opinion of Stevens, J.).
21. Cal. Lab. Code §1160.8 (West Supp. 1983).
22. **Id.**

The **Kremer** court additionally found that the New York administrative procedures satisfied due process, noting that "the administrative nature of the factfinding process is not dispositive."[23] The Board cites this language, apparently for the proposition that Abatti was also provided due process.[24]

Abatti does not ask this Court to re-evaluate the administrative factfinding process. Rather, the questions presented by Abatti deal with the absence of due process at the **judicial** level.

Similarly, the ALRB emphasizes the constitutional adequacy of ALRA administrative procedures. The quality of review provided by the Court of Appeal, not the ALRA administrative scheme, is the subject of Abatti's argument.

23. 456 U.S. at 484, n. 26, 102 S.Ct. at 1889, n. 26, 72 L.Ed.2d at 282, n. 26.

24. Discussing the Court's treament of this subject, Justice Blackmun noted:

> This discussion by itself demonstrates the fallacy of the Court's attempt to differentiate between the state agency's decision and the state court's affirmance of that decision. By relying more on the adequacy of the state agency's procedures than on the adequacy of the state court's procedures, the Court underscores that it is, in fact, granting preclusive effect to a state administrative decision. 456 U.S. at 497, 102 S.Ct. at 1905, 72 L.Ed. 2d at 290 (dissenting opinion of Blackmun, J.) (emphasis in original).

Most importantly, neither the majority nor minority opinions in **Kremer** address the central issue in this case -- the quality of the judicial review that Kremer actually received.[25] **Kremer** does not indicate whether the judicial affirmance of the NYHRD's findings was a summary decision -- as in Abatti's case -- or whether some statement of reasons, however brief, accompanied the holding. The absence of this statement is the core of Abatti's complaint; no case can be considered helpful, let alone controlling, if it does not contain this information.

In fact, unlike Abatti, Kremer received more than a one-sentence summary decision; the Appellate Division of the New York Supreme Court discussed its affirmance of the NYHR Appeal Board at some length.[26] Under New York law, the Appellate Division's order was final and binding, and constituted a "judgment. . .determining the rights of the parties."[27]

In contrast, the ALRB has repeatedly held that summary denial of a petition for review is **not** a judgment on

25. As Justice Stevens indicated, "[t]he proper resolution of the dispute depends. . .on the character of the judicial review to which the agency review is subjected." 456 U.S. at 509, 102 S.Ct. at 1911, 72 L.Ed.2d at 297 (dissenting opinion of Stevens, J.).

26. Appendix C.

27. N.Y. Exec. Law § 298 (McKinney 1982). Section 298 provides, **inter alia**:

> The jurisdiction of the appellate division of the supreme court shall be exclusive and its judgment and order shall be final, subject to review by the court of appeals in the same manner and form and with the same effect as provided for in a special proceeding.

the merits. The issue has arisen when determining whether interest rates on ALRB backpay orders can be increased retroactively after the Court of Appeal has denied a petition for review. Faced with the contention that denial of the petition operates as **res judicata**, precluding modification of the ALRB's order, the Board has responded:

> The Court of Appeal denied the petition for review in the instant case, and it has therefore been neither affirmed nor reversed by the court. According to the Supreme Court's **Tex-Cal** decision,[28] the present status of this case is as if the appeal had never been filed. Since the Court of Appeal's denial of the petition for review is not a decree or order of the court, our original remedial Order in this case is intact, and our power to modify the Order is the same as it would have been had there been no appeal. **High and Mighty Farms**, 8 ALRB No. 100 at p. 14 (1982).

In an accompanying footnote, the **High and Mighty** Board continued: "Since the petition for review in this matter was denied by the Court of Appeal, it is as though no record has been filed."[29]

Most recently, the ALRB reaffirmed this position in a case involving Abatti itself. Citing the above language from **High and Mighty Farms,** the Board held that

28. **Tex-Cal Land Management, Inc. v. Agricultural Lab. Rel. Bd., 24 Cal.3d 335, 156 Cal.Rptr. 1, 595 P.2d 579 (1979).**
29. **8 ALRB No. 100 at p. 14, n. 7.**

denial of a petition for review was not a judgment on the merits and therefore not entitled to **res judicata** effect.[30]

Amicus curiae submits that the ALRB may not alter its characterization of Court of Appeal judgments merely to suit its current litigation posture. Having repeatedly held that judicial denial of a petition for review is "not a decree or order" of the Court of Appeal, the ALRB's assertion that Abatti received a judicial determination on the merits should be accorded little weight.

III.

THE ALRB TACITLY CONCEDES ABATTI'S ARGUMENT.

The ALRB's Brief in Opposition is notable not for its contents but for its omissions. It concedes significant issues raised by Abatti by failing to address them.

Abatti points out that the ALRB has been singled out for special treatment; it is the only California administrative agency that can both award damages and obtain judicial enforcement of its orders without any judicial determination of the legality of its order.[31] Participants in ALRB proceedings are thereby excluded from California's review system. In its brief, the ALRB makes no response to this argument.

30. **Abatti Farms**, 9 ALRB No. 59 at p. 21 (1983).

31. Petition for Writ of Certiorari at p. 16.

More importantly, the ALRB completely ignores Abatti's discussion of the constitutional right to judicial review,[32] preferring to limit its discussion to ALRA procedures. This omission may be deliberate, given the Court's recent indications that administrative adjudications cannot constitutionally be shielded from judicial review.[33]

IV.

CONCLUSION

In **St. Joseph Stock Yards Co. v. United States**, 298 U.S. 38, 84, 56 S.Ct. 720, 80 L.Ed. 1033 (1936), Justice Brandeis (concurring) stated:

> The supremacy of law demands that there shall be opportunity to have some court decide whether an erroneous rule of law was applied; and whether the proceeding in which facts were adjudicated was conducted regularly. To that extent, the person asserting a right, whatever its source, should be entitled to the independent judgment of a court on the ultimate question of constitutionality.

32. **Id.** at pp. 16-19.

33. **Northern Pipeline Construction v. Marathon Pipeline Co.**, - U.S. -, 102 S. Ct. 2858, 2870-71, n. 23, 73 L.Ed.2d 598 (1982); **Atlas Roofing Co., Inc. v. Occupational Safety and Health Service Commission**, 430 U.S. 442, 455, n. 13, 97 S. Ct. 1261, 1269, n. 13, 51 L. Ed.2d 464 (1977).

Abatti's request involves no more than a reaffirmation of this principle. Wherefore, **amicus curiae** Western Growers Association respectfully prays that the California Court of Appeal be directed to reverse, modify or affirm Abatti's case on the merits.

DATED: October 13, 1983

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APPENDIX A

SELECTED ALRB LITIGATION RESULTS[1]

(As of May 11, 1983)

U.S. COURT OF APPEALS			ALRB[2] Upheld	Mixed Result	Adverse Ruling
m[3] (o)[4]	1.	Cel-A-Pak v. ALRB (1978)	1		
m (po)[5]	2.	Cel-A-Pak v. ALRB (1982)			
		Cel-A-Pak v. ALRB (1982) 680 F. 2d 664 ...	1		

1. For cumulative ALRB litigation results as of May 11, 1983, see Petitioners' Petition for Writ of Certiorari, Appendix F.

2. The "ALRB Upheld" heading indicates cases in which the Board's position has been affirmed by the courts. This includes cases in which the courts have summarily denied petitions for review of board orders. "Mixed Result" includes those cases in which a court has -- either by its judgment or by its rationale -- given partial approval to the Board's reasoning and/or to the result sought by the Board, while rejecting other aspects of the Board's position. This category includes petition for review cases in which the Board's final order was only partially enforced. "Adverse Ruling" indicates cases in which the Board's position has been rejected.

3. "m" indicates that a Western Growers Association member was a party in the case.

4. "o" indicates that an opinion issued.

U.S. DISTRICT COURTS			ALRB Upheld	Mixed Result	Adverse Ruling
m(o)	1.	Borchard v. ALRB (1977)			1
m(o)	2.	Cel-A-Pak v. ALRB (1979)			1
m(o)	3.	Cel-A-Pak v. ALRB (1977)			1
mr (o)[6]	4.	Western Growers Assoc. v. Brown (1980)			1
CALIFORNIA SUPREME COURT					
m (po)	1.	Belridge Farm v. ALRB (1978) 21 Cal. 3d 551			1
m (po)	2./	Tex-Cal Land Mgmt. v. ALRB (1979) 24 Cal. 3d 335 (3:14)[7]			1

5. "po" indicates a published opinion.

6. "r" indicates that Western Growers Association attorneys provided representation in the case.

7. The notation "3:14" indicates that the case concerns Board decision 3 ALRB No. 14.

CALIFORNIA SUPREME COURT (cont'd)			ALRB Upheld	Mixed Result	Adverse Ruling
mr (po)	3.	J.R. Norton v. ALRB (1979) 26 Cal. 3d 1 (4:39)		1	
m (po)	4.	Kaplan's Fruit & Produce v. Superior Ct. (1979) 26 Cal. 3d 60 (amicus).....		1	
m (po)	5.	Sam Andrews' Sons v. ALRB (1981) 28 Cal. 3d 781 (3:45).....	1		
mr (po)	6.	Martori Bros. v. ALRB (1981) 29 Cal. 3d 721 (5:47)		1	
mr (po)	7.	San Clemente Ranch v. ALRB (1981) 29 Cal. 3d 874 (5:54)	1		
mr (po)	8.	Highland Ranch v. ALRB (1981) 29 Cal. 3ds 848 (5:54)		1	
mr (po)	9.	ALRB v. California Coastal Farms (1982) 31 Cal. 3d 469	1		

CALIFORNIA COURT OF APPEAL			ALRB Upheld	Mixed Result	Adverse Ruling
(a) NOW PENDING IN SUPREME COURT[8]					
m	1.	Triple E Produce v. ALRB (1982) (6:46) . . .			[1]
(b) GENERAL CASES DECIDED					
m	1.	Andrews v. ALRB (1977)	1		
m (o)	2.	Superior Farming v. Mahoney (1977)	1		
mr	3.	Nish Noroian v. Superior Court (ALRB) (1978)	1		
m	4.	Bonita Packing Co. v. ALRB (1979) (4:96). . .	1		
m (po)	5.	Dessert Seed Co. v. Brown (1979) 96 Cal. App. 3d 69.		1	

8. The granting of a hearing by the California Supreme Court vacates a Court of Appeal decision. The now-vacated Court of Appeal result for each case now pending in the Supreme Court is indicated in brackets.

(b) GENERAL CASES DECIDED (cont'd)			ALRB Upheld	Mixed Result	Adverse Ruling
mr (po)	6.	San Diego Nursery v. ALRB (1979) 100 Cal. App. 3d 128		1	
mr	7.	Royal Packing v. ALRB & UFW (1980)	1		
mr (po)	8.	California Coastal Farms v. ALRB (1980)...	1		
mr (po)	9.	California Coastal Farms v. Doctoroff (1981) 117 Cal. App. 3d 156	1		

(c) PETITIONS FOR REVIEW DECIDED

m (t)[9]	1.	Frudden Produce/Whitney Farms v. ALRB (1977) (3:68)	1		
m (po) (t)	2.	UFW v. ALRB (Robert S. Andrews) (1977) 74 Cal. App. 3d 347 (3:45)	1		

9. "t" indicates that petition for review was denied because it was not timely filed.

(c) PETITIONS FOR REVIEW DECIDED (cont'd)			ALRB Upheld	Mixed Result	Adverse Ruling
*m[10]	3.	UFW v. ALRB (Baillie) (1978) (3:85)	1		
*m	4.	Adam Farms v. ALRB (1978) (4:12)	1		
*mr	5.	O.P. Murphy v. ALRB (1979) (hg. den., cert. den.)[11] (4:106)	1		
*m	6.	Ron Nunn Farms v. ALRB (1979) (hg. den.) (4:34)	1		
m					
*m	7.	Dave Walsh Co. v. ALRB (1979) (hg. den.) (4:84)	1		
*mr	8.	Martori Bros. v. ALRB (1979) (hg. den.) (4:80)	1		

10. "*" indicates that a petition for review was summarily denied.

11. "Hg. den." indicates that a hearing was denied by the California Supreme Court "Cert. den." indicates that Certiorari was denied by the U.S. Supreme Court.

(c) PETITIONS FOR REVIEW DECIDED (cont'd)			ALRB Upheld	Mixed Result	Adverse Ruling
*mr	9.	San Diego Nursery v. ALRB (1971) (hg. den.) (4:93)	1		
*mr	10	10. John Elmore, Inc. v. ALRB (1979) (hg. den.) (4:98)	1		
*m	11.	Garin Company v. ALRB (1979) (hg. den.) (5:5).....	1		
*mr	12.	Bertuccio Farms v. ALRB (1979) (hg. den.) (5:5).....	1		
*mr	13.	Mario Saikhon, Inc. v. ALRB (1979) (5:44)...	1		
*m	14.	Belridge Farms v. ALRB (1979) (hg. den.) (4:30)	1		
*mr	15.	Jesus Martinez v. ALRB (1980) (5:51)...	1		
*m	16.	Security Farms v. ALRB (1980) (4:67)...	1		

(c) PETITIONS FOR REVIEW DECIDED (cont'd)			ALRB Upheld	Mixed Result	Adverse Ruling
mr (po)	17.	Royal Packing Co. V. ALRB (1980) 101 Cal. App. 3d 826 (5:31).....	1		
m	18.	Oceanview Farms v. ALRB (1980) (hg. den.) (5:71)	1		
*m	19.	Superior Farming Co. v. ALRB (1980) (hg. (5:6).....	1		
*mr	20.	D'Arrigo Bros. v. ALRB (1980) (hg. den.) (4:45)	1		
*m	21.	Kaplan's Fruit & Produce v. ALRB (1980) (hg. den.) (5:40)	1		
*m	22.	Tenneco West, Inc. v. ALRB (1980) (hg. den.) (3:92)	1		
*m	23.	Tenneco West v. ALRB (1980) (hg. den.) (4:16)	1		
m (po)	24.	Abatti Farms, Inc. v. ALRB (1980) 107 Cal.		1	

(c) PETITIONS FOR REVIEW (cont'd)			ALRB	Mixed	Adverse
			Upheld	Result	Ruling
		App. 3d 937 (hg. den.) (5:34)			
*m	25.	Tex-Cal Land Mgmt., Inc. (1980) (5:29)....	1		
*mr	26.	Pappas & Co. (1980) (hg. den.) (5:52)....	1		
*mr	27.	High & Mighty Farms (1980) (hg. den.) (6:34)	1		
mr (po)	28.	George Arakelian Farms, Inc. (1980) 111 Cal. App. 3d 258 (5:10)		1	
*mr	29.	O.P. Murphy Produce (1980) (hg. den.) (5:63)	1		
*mr	30.	High & Mighty Farms (1980) (6:34).....	1		
*mr	31.	California Coastal Farms (1980) (hg. den.) (6:25)	1		
*m (po)	32.	Merrill Farms (1980) 113 Cal. App. 3d 176 (hg. den.) (5:58)			1
*mr	33.	J.R. Norton (1981) (hg. den.) (6:26).....	1		

		(c) PETITIONS FOR REVIEW DECIDED (cont'd)	ALRB Upheld	Mixed Result	Adverse Ruling
m	34.	Sam Andrews' Sons (1981) (6:44)	1		
m	35.	Miranda Mushroom, Inc. (1981) (hg. den.) (6:22)	1		
*mr	36.	Associated Produce (1981) (6:54)	1		
*mr	37.	UFW v. ALRB Kaplan's Fruit & Produce (1981) (6:36)	1		
mr (o)	38.	Eto v. ALRB (1981) (6:20) (hg. den.)	1		
*m	39.	Ron Nunn v. ALRB (1981) (6:41)	1		
*m	40.	Tenneco West v. ALRB (1981) (6:53)....	1		
*mr	41.	Holtville Farms v. ALRB (1981) (7:15) (hg. den.)	1		
m	42.	Ranch No. 1 v. ALRB (1982) (6:37) (hg. den.)	1		
*mr	43.	Verde Produce v. ALRB (1982) (7:27) (hg. den.)	1		

			(c) PETITIONS FOR REVIEW DECIDED (cont'd)	ALRB Upheld	Mixed Result	Adverse Ruling
	*m	44.	Guimarra Vineyards v. ALRB (1982) (7:7) ...	1		
	*mr	45.	Bertuccio v. ALRB (1982) (81-CL-20-SAL)...	1		
g	m(po)	46.	Tex-Cal v. ALRB (1982) 135 Cal. App. 3d 906 (7:11)			1
	*mr	47.	Arakelian Farms v. ALRB (1982) (8:32)....	1		
	*m	48.	Merrill Farms v. ALRB (1982) (8:4)	1		
	*mr	49.	Martori Farms v. ALRB (1982) (8:23) (hg. den.)	1		
	*mr	50.	Royal Packing v. ALRB (1982) (8:17)....	1		
	*mr	51.	Bertuccio Farms v. ALRB (1982) (8:6) (hg. den.)	1		

			ALRB	Mixed	Adverse
(c) PETITIONS FOR REVIEW DECIDED (cont'd)			Upheld	Result	Ruling
*mr	52.	San Clemente Ranch v. ALRB (1982) (8:29) ...	1		
*mr	53.	Bertuccio Farms v. ALRB (1982) (8:39) (hg. den.)	1		
mr (po)	54.	Mario Saikhon v. ALRB (1983) 140 Cal. App. 3d 581 (8:88) (hg. den.)	1		
*m	55.	Abatti Farms v. ALRB (1983) (7:36) (hg. den.)	1		
*mr	56.	Kophammer Farms v. ALRB (1983) (8:21) ...	1		
mr (po)	57.	Nish Noroian Farms v. ALRB (1983) - Cal. App. 3d - (8:25)		1	

APPENDIX B

CALIFORNIA FRUIT, NUT AND VEGETABLE PRODUCTION: MARKET SHARE OF NATIONAL PRODUCTION[1]

Almonds	99.9%
Apricots	97.4%
Avocados	85.7%
Broccoli	89.9%
Carrots	49.0%
Cauliflower	71.3%
Celery	71.4%
Dates	99.8%
Figs	99.9%
Garlic	100%
Grapes	92.6%
Lettuce	72.3%
Melons (Honeydew)	65.8%
Nectarines[2]	97.2%
Olives[2]	99.9%
Onions	31.1%
Peaches	66.2%
Pears	39.8%

1. Derived from California Department of Food and Agriculture, Crop and Livestock Reporting Service, 1982 Annual.
2. Derived from 1978 Census of Agriculture (United States Department of Agriculture, Bureau of the Census, June, 1981).

Pistachios	100%
Plums[2]	88.4%
Prunes	100%
Potatoes	100%
Winter	58.9%
Late Spring	46.5%
Early Summer	14.3%
Plums	88.4%
Strawberries	71.4%
Tomatoes (including those for processing)	75.4%
Walnuts	99.0%

In the Supreme Court of the United States

October Term, 1981

RUBIN KREMER,

Petitioner,

vs.

CHEMICAL CONSTRUCTION CORPORATION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOINT APPENDIX

23

SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION FIRST DEPARTMENT

RUBIN KREMER, Petitioner-Appellant,

v.

The State Division on Human Rights,
The State Human Rights Appeal Board
and Chemical Construction Corporation, Respondents

NOTICE OF PETITION

SIRS:

PLEASE TAKE NOTICE that upon the annexed petition of Rubin Kremer, verified the 6 day of December, 1977, an application will be made at a term of this court to be held at the courthouse thereof, located at Madison Avenue and 25th Street, Borough of Manhattan, City of New York, on the 28 of December, 1977, at 10:00 a.m., or as soon thereafter as counsel can be heard, for a judgment pursuant to § 298 of the Human Rights Law and pursuant to CPLR Article 78, setting aside the determination and order made by respondents dismissing petitioner's complaint of an unlawful discriminatory practice and denying his reinstatement as a piping analytical engineer with Chemical Construction Corporation, and compelling said respondents to reinstate petitioner as such engineer, and awarding his back pay, and for such other and further

relief as may be deemed just and proper.

Dated: December 5, 1977
New York, N.Y.

Yours, et cetera,
RUBIN KREMER
c/o R. Garkawe
2120 Wallace Ave.
Apt. 2B
Bronx, New York
10462
Tel.: 892-1322

To:
Chemical Construction Corporation
Mr. Don Steenland,
Personnel Director
One Penn Plaza
New York, N.Y. 10001

State Human Rights Appeal Board
Two World Center, 82nd Floor
New York, N.Y. 10047

Donald M. Crook, Esq.
Layton & Sherman, Esqs.
50 Rockefeller Plaza
New York, N.Y. 10020

12 Encl. No. 12

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on February 27, 1978

Present-Hon. Francis T. Murphy, Jr., Presiding Justice
Samuel J. Silverman
Herbert B. Evans
Arnold L. Fein
Arthur Markewich Justices

1877

[M4560]

RUBIN KREMER,

--against--

THE STATE DIVISION ON HUMAN RIGHTS, THE STATE HUMAN RIGHTS APPEAL BOARD and CHEMICAL CONSTRUCTION CORPORATION, Respondents

The above-named petitioner having presented a petition to this Court praying for an order, pursuant to Section 298 of the Executive Law, setting aside and annulling the determination of respondent The State Human Rights Appeal Board dated November 25, 1977, dismissing peti-

tioner's complaint and determining there was no probable cause to believe that respondent Chemical Construction Corporation engaged in the unlawful discriminatory practice complained of, and respondent Chemical Construction, Corporation having submitted a memorandum in answer to said petition,

26

Now, upon reading and filing the notice of application, with proof of due service thereof, the petition of Rubin Kremer, verified December 6, 1977, and the memorandum of Rubin Kremer, all read in support of the application, and the memorandum of Messrs. Layton and Sherman in opposition to said application, and after hearing Mr. Rubin Kremer, appearing **pro se**, for the application, and Messrs. Layton and Sherman opposed; and due deliberation having been had thereon,

It is unanimously ordered that the determination of the respondent, The State Human Rights Appeal Board, be and the same hereby is confirmed, without costs and without disbursements.

Enter:

Joseph J. Lucchi
Clerk

PROOF OF SERVICE

STATE OF CALIFORNIA)

) ss:

COUNTY OF RIVERSIDE)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 4075 Agate Street, Riverside, California 92509.

On October 14, 1983, I served the within MOTION OF WESTERN GROWERS ASSOCIATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF GRANTING PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA and BRIEF OF AMICUS CURIAE, WESTERN GROWERS ASSOCIATION IN SUPPORT OF GRANTING PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA on the interested parties in said action, by placing a true copy in each of sealed envelopes, with postage thereon fully prepaid, in the United States mail at San Bernardino, California, addressed as follows:

DANIEL G. STONE, Chief Deputy Solicitor
AGRICULTURAL LABOR RELATIONS BOARD
915 Capitol Mall, Third Floor
Sacramento, CA 95814

GRAY, CARY, AMES & FRYE
2100 Union Bank Building
San Diego, California 92101

HEWITT, SULLIVAN & MARSHALL
1010 Second Avenue, Suite 2121
San Diego, California 92101

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED ON October 14, 1983, at Riverside, California.

JACK GALLAGHER